REMARKS

Claims 25 to 55 are pending in the present application. Claims 1 to 24 were previously

cancelled without prejudice or disclaimer of the subject matter claimed therein. Claims 25 to 52

and 55 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication

2003/0126256 to Cruickshank et al. ("Cruickshank"). Claims 53 and 54 were rejected under 35

U.S.C. § 103(a) as being unpatentable over Cruickshank in view of Official Notice.

Claims 25, 36 and 54 have now been amended. Reconsideration of the application in

light of the amendments and the following remarks is respectfully requested.

Rejections based on Cruickshank

Claims 25 to 52 and 55 were rejected under 35 U.S.C. § 102(e) as being anticipated by

Cruickshank. Claims 53 and 54 were rejected under 35 U.S.C. § 103(a) as being unpatentable

over Cruickshank in view of Official Notice.

Cruickshank describes a system for use with a broadband network to obtain metrics of

performance of a portion of the network. *See* Cruickshank, paragraph 0005. In Cruickshank, a

data collector controller 46 obtains data from a network 12 by polling devices on the network.

The configuration of controller 46 determines which devices on the network 12 are polled, what

data is collected, and what mechanisms of data collection are used. The collector 46 obtains data

periodically according to predetermined time intervals according to what features of the network

are reflected in the corresponding obtained data. *See* Cruickshank, paragraph 0030.

Cruickshank describes that "[t]he sample intervals apply to the intervals for which the data are

collected." *See* Cruickshank, paragraph 0047.

Independent claim 25 of the present application has now been amended so as to recite

"sending measurement packets from a first measuring computer to a second measuring computer

over a measurement path with an adjustable distribution in time so as to determine first status

information regarding the measurement path." Support for the amendment may be found, for

example, at paragraphs 0049-0052 of the specification. It is respectfully submitted that

Cruickshank does not teach the above-recited features of amended claim 25. In contrast,

Cruickshank merely collects raw data by periodically polling devices on the network. *See*

Cruickshank, paragraph 0030. Cruickshank nowhere teaches sending measurement packets from

a first measuring computer to a second measuring computer over a measurement path so as to

determine first status information regarding the measurement path, as recited in claim 25. *See*

Cruickshank, paragraph 0047. Nor would the Examiner's Official Notice teach or suggest

sending such measurement packets with an adjustable distribution in time, as recited.

Because each of Cruickshank and the Examiner's Official Notice fails to teach each and

every feature of independent claim 25, Cruickshank alone could not anticipate claim 25 or any of

its dependent claims, nor could a combination of Cruickshank and the Examiner's Official

Notice, to the extent proper, render either of dependent claims 53 and 54 obvious. It is noted that

the Examiner has taken unsupported Official Notice. It is respectfully submitted that it would not

have been obvious for one of ordinary skill in the art to provide the alleged combinations.

With specific regard to dependent claim 36, this claim has now been amended so as to

recite "the first status range reflects a magnitude of a first measurement result of the sending [of

the measurement packets] and the second status range reflects a value describing a status of a

first component of the measuring system." Support for the amendment may be found, for

example, at paragraphs 0078-0080 of the specification and in original claim 36. It is respectfully

submitted that Cruickshank does not teach at least a first status range reflecting a magnitude of a

first measurement result of sending measurement packets between measuring computers, as

recited in amended claim 36. In contrast, Cruickshank merely displays network performance

information, such as CMTS data, obtained by polling network devices. *See* Cruickshank,

paragraphs 0030 and 0142 and Fig. 3. It is respectfully submitted that dependent claim 36 is

patentable over Cruickshank for this additional reason.

Reconsideration and withdrawal of the anticipation rejection of claims 25 to 52 and 55

under 35 U.S.C. §120(e) based on Cruickshank, and the obviousness rejection of claims 53 and

54 under 35 U.S.C. §103(a) based on a combination of Cruickshank and Official Notice, is

therefore respectfully requested.

CONCLUSION

In view of the foregoing it is believed that claims 25 to 55 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

Dated: November 18, 2008   Respectfully submitted,

                                            By _____

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